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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/528,565
Filing Date: November 04, 2005
Appellant(s): KROTH ET AL.

Aaron C. Walker
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5-17-2010 appealing from the Office action
mailed 7-10-2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:
14-16, 18-27 and 29

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6633765 Maggenti 10-2003

5559804 Amada et al. 9-1996

3GPP (3GPP TS 22.146 V5.2.0 (2002-03), 3rd Generation Partnership Project; Technical Specification Group Services and Systems Aspects; Multimedia Broadcast/Multicast Service; Stage 1 (Release 5))

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 14-16, 18-19, 21-27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maggenti US006633765B1 in view of Amada US005559804A.

As to claim 14, Maggenti discloses a method for transmitting payload information in a radio communication system having a radio network controller [102], a base station [104,106] and subscriber stations [108,110,112], with the base station being connected to the subscriber stations via a radio communication interface (see fig. 1, 3; see col. 3, lines 16-25, 38-53), the method comprising: connecting the radio network controller to an access facility of a core network and to the base station (see fig. 1, 3); making the payload information available as a service to the subscribers, the payload information being made available from the access network, via the radio network controller and the base station (see col. 4, lines 15-38); sending a request notification to at least some of the subscriber stations, the request notification announcing that a transmission of the payload information is pending (see col. 4, lines 46- 67), requesting that the subscriber stations reply [register] before the payload information is transmitted to the subscribers stations; and transmitting the payload information only to subscriber stations from which a reply was received (see col. 4, lines 59-62) or also when at least one device of the local subnet has replied (see col. 4, lines 46 - col. 5, line 45; col. 6, line 45-53). Maggenti does not specifically disclose including an information field that indicates whether or not a reply to requested notification should be sent. In an analogous art,

Amada discloses including an information field that indicates whether or not a reply to requested notification should be sent (see fig. 3, col. 8, lines 10-21). Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention was made to include a reply field in order to indicate that a reply is requested in order to confirm the selection.

As to claim 15, Maggenti discloses a method wherein the request notification is not sent to all subscriber stations (see col. 4, lines 50-52).

As to claim 16, Maggenti discloses a method wherein the request notification is sent to subscriber stations selected based on the subscriber stations assignment to radio cells (see col. 9, line 60 – col. 10, line 25).

As to claim 18, Maggenti discloses a method wherein the radio network controller makes a decision regarding which subscriber stations are to receive the request notification (see col. 4, lines 46 - col. 5, line 45; col. 6, line 45-53).

As to claim 19, Maggenti discloses a method wherein a decision is made regarding which subscriber stations are to receive the request notification, and the decision is based on criterion specific [location] to the radio network of the radio communication system (see col. 9, line 60 – col. 10, line 25).

As to claim 21, Maggenti discloses a method wherein replies from the subscriber stations are not transmitted concurrently (see col. 6, line 7-10).

As to claim 22, Maggenti discloses a method wherein replies from the subscriber stations are transmitted at random (see col. 6, line 7-10).

As to claim 23, Maggenti discloses a method wherein replies from the subscriber stations are transmitted in a controlled manner with regard to time of sending the request notification (see col. 6, line 10-24).

As to claim 24, Maggenti discloses a method wherein the request notification is used to configure the subscriber stations for the payload information (see col. 8, lines 1-38).

As to claim 25, Maggenti discloses a method wherein transmission of the payload information for a group of subscriber stations takes place following receipt of the reply from one subscriber station of the group (see col. 5, lines 1-5).

As to claim 26, Maggenti discloses a radio communication system for transmitting payload information as a service to a plurality of subscriber stations, comprising: a radio network controller [102] connected to an access facility of a core network; a base station [104, 106] connected to the radio network controller (see fig. 1, 3); subscriber stations connected to the base station via a radio communication interface (see fig. 1, 3; see col. 3, lines 16-25, 38-53); a supply unit [114] to make the payload information available as a service to a plurality of subscribers stations (see col. 4, lines 3-15, 46-67); a request unit to send a request notification to at least some of the subscriber stations by the subscriber stations reply before the payload information is transmitted to the subscriber stations; and a transmit unit to transmit the payload information to subscriber stations from which a reply was received (see col. 4, lines 46 - col. 5, line 45; col. 6, line 45-53); the request notification announcing that a transmission of the payload information is pending (see col. 4, lines 46- 67), requesting that the

subscriber stations reply [register] before the payload information is transmitted to the subscribers stations; and transmitting the payload information only to subscriber stations from which a reply was received (see col. 4, lines 59-62) or also when at least one device of the local subnet has replied (see col. 4, lines 46 - col. 5, line 45; col. 6, line 45-53). Maggenti does not specifically disclose including an information field that indicates whether or not a reply to requested notification should be sent. In an analogous art, Amada discloses including an information field that indicates whether or not a reply to requested notification should be sent (see fig. 3, col. 8, lines 10-21). Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention was made to include a reply field in order to indicate that a reply is requested in order to confirm the selection.

As to claim 27, Maggenti discloses a radio communication system wherein the request notification is not sent to all subscriber stations (see col. 4, lines 50-52).

Regarding claim 29 is rejected for the same reasons as shown in claim 14.

4. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maggenti in view of Amada US005559804A and further in view of 3GPP TS 22.146 V5.2.0 (2002-03), 3rd Generation Partnership Project; Technical Specification Group Services and System Aspects; Multimedia Broadcast/Multicast Service; Stage 1 (Release 5).

As to claim 20, Maggenti discloses a method everything as explained above except for wherein a decision is made regarding which subscriber stations are to

receive the request notification (see col. 9, line 60 – col. 10, line 25). The combination of Maggenti and Amada does not specifically discloses the decision takes into consideration at least one factor selected from the group consisting of configuration of the radio network of the radio communication system, existing knowledge on a radio network side about subscribers, utilization of radio resources in the radio network, utilization of radio resources in areas of the radio network, and specific properties of the service. In an analogous art, 3GPP document discloses the decision takes into consideration existing knowledge on a radio network side about subscribers and utilization of radio resources in the radio network (see section 4.2.1). Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to take in consideration the radio resources when transmitting to manage the wireless resources and avoid wasting the limited bandwidth.

(10) Response to Argument

A. Review of the prior art

Appellant's comments on each prior art Maggenti (US 6,633,765), Amada (US 5,559,804) and 3GPP TS 22.146 V5.2.0, 3rd Generation Partnership Project are acknowledged.

B. Claims 14-16, 18-19, 21-27, and 29 are patentable over Maggenti (U.S. Patent No. 6,633,765) in view of Amada (U.S. Patent No. 5,559,804)

In response to Appellant 's argument that Maggenti does not disclose "including an information filed that indicates whether or not a reply to request notification should be sent" so that Maggenti fails to disclose "sending a request notification to at least some of the subscriber stations, the request notification announcing that a transmission of the payload information is pending and including an information field that indicates whether or not a reply to the request notification should be sent by the subscriber stations before the payload information is transmitted to the subscribers stations", examiner respectfully disagrees for the following reasons: It is noted that the Office action mailed 7/10/2009 clearly pointed out that Maggenti is teaching the steps of sending a notification request (please see, step 500 or 600) to at least some of the subscriber stations, the request notification announcing that a transmission of the payload information is pending before the payload information is transmitted to the subscribers stations (see col. 4, lines 46 - col. 5, line 45; col. 6, lines 46-53, as seen in the reference the membership query is announce the transmission of a payload and obviously is before the payload). Thus, Maggenti differs from the claimed invention in not specifically teaching the request notification including an information field that indicates whether or not a reply to the request notification should be sent by the subscriber stations. However, an information field is taught by Amada in col. 8, lines 10-21. Therefore, the combination of the references teaches all the claimed limitations as recited in claim 14.

In response to appellant further argued that Amada fails to teach the claimed notification message announcing that a transmission of the payload information is

pending and including an information field that indicates whether or not a reply to the request notification should be sent by the subscriber stations before the payload information is transmitted to the subscribers stations, it is noted that Maggenti teaches to send the request notification announcing that a transmission of the payload information is pending (see col. 4, lines 46 - col. 5, line 45; col. 6, lines 46-53 , as seen in the reference the membership query is announce the transmission of a payload); Maggenti differs from the claimed invention in not specifically disclosing the request notification including an information filed that indicates whether or not a reply to request notification should be sent by the subscriber station. However, Amada teaches communication frame for utilizing in communicating between a base station and user terminal comprising a predetermined format which is composed of an control field that contain a request reply (see col. 7 lines 24-32 and col. 8, lines 10-21), thereby indicating of a wireless terminal granted to make data transmission, read on indication of whether or not a reply to the request notification should be sent by subscriber station. Thus, for the reasons discussed above, Maggenti and Amada, suggest all of the features recited in claim 14, so that claim 14 is rejected under the prior art. Claims 15-16, 18-19, and 21-25 depend from claim 14 and, therefore, are rejected under the prior art for at least the same reasons as claim 14.

Furthermore , appellant asserts that the request reply data in Amada does not correspond to indicate whether or not a reply to the request should be sent, because Amada does not disclose a specific information field in the request reply data,

but instead discloses a code indicative of the direction of transmission of data, an address indicative of the wireless terminal" ; Maggenti is teaching the steps of sending a notification/request or query (please see, step 500 or 600) to at least some of the subscriber stations, the request notification announcing that a transmission of the payload information is pending before the payload information is transmitted to the subscribers stations (see col. 4, lines 46 - col. 5, line 45; col. 6, lines 46-53 , as seen in the reference the membership query is announce the transmission of a payload and obviously is before the payload). Thus, Maggenti differs from the claimed invention in not specifically teaching the request notification including an information field that indicates whether or not a reply to the request notification should be sent by the subscriber stations. However, an information field is taught by Amada in col. 8, lines 10-21. Therefore, the combination of the references teaches all the claimed limitations as recited in claim 14.

For claim 26, appellant argument that it should be allowed for the same reasons as presented for claim 14. As discussed above Maggenti is teaching the steps of sending a notification/request or query (please see, step 500 or 600) to at least some of the subscriber stations, the request notification announcing that a transmission of the payload information is pending before the payload information is transmitted to the subscribers stations (see col. 4, lines 46 - col. 5, line 45; col. 6, lines 46-53 , as seen in the reference the membership query is announce the transmission of a payload and obviously is before the payload). Thus, Maggenti differs from the claimed invention in

not specifically teaching the request notification including an information field that indicates whether or not a reply to the request notification should be sent by the subscriber stations. However, an information field is taught by Amada in col. 8, lines 10-21. Therefore, the combination of the references teaches all the claimed limitations as recited in claim 26.

For claim 29, appellant argument that it should be allowed for the same reasons as presented for claim 14. As discussed above Maggenti is teaching the steps of sending a notification/request or query (please see, step 500 or 600) to at least some of the subscriber stations, the request notification announcing that a transmission of the payload information is pending before the payload information is transmitted to the subscribers stations (see col. 4, lines 46 - col. 5, line 45; col. 6, lines 46-53 , as seen in the reference the membership query is announce the transmission of a payload and obviously is before the payload). Thus, Maggenti differs from the claimed invention in not specifically teaching the request notification including an information field that indicates whether or not a reply to the request notification should be sent by the subscriber stations. However, an information field is taught by Amada in col. 8, lines 10-21. Therefore, the combination of the references teaches all the claimed limitations as recited in claim 29.

C. Claim 20 is patentable over Maggenti in view of Amada and further in view of 3GPP

For claim 20, appellant argument that it should be allowed for the same reasons as presented for claim 14. As discussed above Maggenti is teaching the steps of sending a notification/request or query (please see, step 500 or 600) to at least some of the subscriber stations, the request notification announcing that a transmission of the payload information is pending before the payload information is transmitted to the subscribers stations (see col. 4, lines 46 - col. 5, line 45; col. 6, lines 46-53 , as seen in the reference the membership query is announce the transmission of a payload and obviously is before the payload). Thus, Maggenti differs from the claimed invention in not specifically teaching the request notification including an information field that indicates whether or not a reply to the request notification should be sent by the subscriber stations. However, an information field is taught by Amada in col. 8, lines 10-21. Therefore, the combination of the references teaches all the claimed limitations as recited in claim 14.

D. Conclusion

For the above reasons, it is believed that the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Marcos L Torres/

Examiner, Art Unit 2617

Conferees:

/George Eng/

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